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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके ।
Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on the 3rd March, 1992 :—

BILL No. 31 OF 1992

A Bill to amend the Public Liability Insurance Act, 1991.

BE it enacted by Parliament in the Forty-third Year of the Republic of India as follows :—

Short title and commencement.

1. (*1*) This Act may be called the Public Liability Insurance (Amendment) Act, 1992.

(*2*) It shall be deemed to have come into force on the 31st day of January, 1992.

Amendment of section 2.

6 of 1991.

2. In section 2 of the Public Liability Insurance Act, 1991 (hereinafter referred to as the principal Act),—

(*i*) for clause (*a*), the following clause shall be substituted, namely:—

> (*a*) " accident" means an accident involving a fortuitous or sudden or unintended occurrence while handling any hazardous substance resulting in continuous or intermittent or repeated exposure to death of, or injury to, any person or damage to any property but does not include an accident by reason only of war or radio-activity;';

(*ii*) for clause (*g*), the following clause shall be substituted, namely:—

'(*g*) "owner" means a person who owns, or has control over handling, any hazardous substance at the time of accident and includes,—

(*i*) in the case of a firm, any of its partners;

(*ii*) in the case of an association, any of its members; and

(*iii*) in the case of a company, any of its directors, managers, secretaries or other officers who is directly in charge of, and is responsible to, the company for the conduct of the business of the company;';

(*iii*) after clause (h), the following clause shall be inserted, namely:—

'(*ha*) "Relief Fund" means the Environmental Relief Fund established under section 7A;'.

Amendment of section 4.

3. In section 4 of the principal Act, after sub-section (2), the following sub-sections shall be inserted, namely:—

'(*2A*) No insurance policy taken out or renewed by an owner shall be for an amount less than the amount of the paid-up capital of the undertaking handling any hazardous substance and owned or controlled by that owner, and more than the amount, not exceeding fifty crore rupees, as may be prescribed.

Explanation.—For the purposes of this sub-section, "paid-up capital means, in the case of an owner not being a company, the market value of all assets and stocks of the undertaking on the date of contract of insurance.

(*2B*) The liability of the insurer under one insurance policy shall not exceed the amount specified in the terms of the contract of insurance in that insurance policy.

(*2C*) Every owner shall also, together with the amount of premium, pay to the insurer, for being credited to the Relief Fund established under section 7A such further amount not exceeding the sum equivalent to the amount of premium, as may be prescribed.

(*2D*) The insurer shall remit to the authority specified in sub-section (*3*) of section 7A the amount received from the owner under sub-section (*2C*) for being credited to the Relief Fund in such manner and within such period as may be prescribed and where the insurer falls to so remit that amount, it shall be recoverable from the insurer as arrears of land revenue or of public demand.'.

Amendment of section 7.

4. In section 7 of the principal Act,

(*a*) for sub-section (*3*), the following sub-section shall be substituted, namely:—

"(3) When an award is made under this section—

(*a*) the insurer, who is required to pay any amount in terms of such award and to the extent specified in sub-section

(2B) of section 4, shall, within a period of thirty days of the date of announcement of the award, deposit that amount in such manner as the Collector may direct;

(b) the Collector shall arrange to pay from the Relief Fund, in terms of such award and in accordance with the scheme made under section 7A, to the person or persons referred to in sub-section (2) such amount as may be specified in that scheme;

(c) the owner shall, within such period, deposit such amount in such manner as the Collector may direct.";

(b) after sub-section (7), the following sub-section shall be inserted, namely:—

"(8) Where an owner is likely to remove or dispose of his property with the object of evading payment by him of any amount of the award, the Collector may, in accordance with the provisions of rules 1 to 4 of Order XXXIX of the First Schedule to the Code of Civil Procedure, 1908, grant a temporary injunction to restrain such act.".

5 of 1908.

Insertion of new section 7A.

5. After section 7 of the principal Act, the following section shall be inserted, namely:—

Establishment of Environmental Relief Fund.

"7A. (1) The Central Government may, by notification, establish a fund to be known as the Environmental Relief Fund.

(2) The Relief Fund shall be utilised for paying, in accordance with the provisions of this Act and the scheme made under sub-section (3), relief under the award made by the Collector under section 7.

(3) The Central Government may, by notification, make a scheme specifying the authority in which the Relief Fund shall vest, the manner in which the Relief Fund shall be administered, the form and the manner in which money shall be drawn from the Relief Fund and for all other matters connected with or incidental to the administration of the Relief Fund and the payment of relief therefrom.".

Amendment of section 14.

6. In section 14 of the principal Act, in sub-section (1), for the words, brackets and figures, "sub-section (1) or sub-section (2)", the words, brackets, figures and letters "sub-section (1) or sub-section (2) or sub-section (2A) or sub-section (2C)" shall be substituted.

Amendment of section 23.

7. In section 23 of the principal Act,—

(a) in sub-section (2),—

(i) clause (a) shall be re-lettered as clause (ac);

(ii) before clause (ac), as so re-lettered, the following clauses shall be inserted, namely:—

"(a) the maximum amount for which an insurance policy may be taken out by an owner under sub-section (2A) of section 4;

(*aa*) the amount required to be paid by every owner for being credited to the Relief Fund under sub-section (*2C*) of section 4;

(*ab*) the manner in which and the period within which the amount received from the owner is required to be remitted by the insurer under sub-section (*2D*) of section 4;";

(*b*) in sub-section (*3*), for the word "rule", wherever it occurs, the words "rule or scheme" shall be substituted.

Repeal and saving.

8. (*1*) The Public Liability Insurance (Amendment) Ordinance, 1992 is hereby repealed. Ord. 6 of 1992.

(*2*) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

The Public Liability Insurance Act, 1991 was enacted with the object of providing immediate relief to the victims of accidents that might occur while handling hazardous substances. The owner who has control over handling hazardous substances is required under the Act to pay specified amounts to the victims as interim relief based on no fault liability. It is mandatory for every owner handling hazardous substances to take out insurance policies for the purpose.

2. The aforesaid Act could not, however, be implemented on account of the insurance companies not agreeing to give insurance policies for unlimited liability of the owners. It was, therefore, felt that the liability of the insurance companies should be limited to the amount of the insurance policy, though the owner's liability shall continue to be unlimited under the Act. It was considered appropriate to create an Environmental Relief Fund with the additional money collected from the owners having control over handling of hazardous substances. This fund would be used to meet the requirement of providing immediate relief to the victims. The minimum and maximum limits of the insurance amount in an insurance policy also needed to be specified for ensuring payment of adequate relief. Certain definitions were also to be suitably modified to make the meaning more explicit. It was felt necessary to prevent any transfer of property by the owner in case he intended to do so for evading his liability to pay compensation.

3. To achieve the above objective, the Public Liability Insurance (Amendment) Ordinance, 1992, was promulgated by the President on 31st January, 1992 as the owners handling hazardous substances had to take insurance policies by 31st March, 1992.

4. The Bill seeks to replace the said Ordinance and to achieve the aforesaid objects.

NEW DELHI; KAMAL NATH.

The 17th February, 1992.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill seeks to empower the Central Government to make a scheme with respect to the Environmental Relief Fund.

2. Clause 7 empowers the Central Government to prescribe the maximum amount of an insurance policy, the amount required to be paid by an owner to the Relief Fund and the manner in which and the period within which the money as collected is to be remitted to the Relief Fund by the insurer.

3. The matters in respect of which the Central Government has been empowered to make a scheme and rules relate to matters of procedure and detail. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 36 OF 1992

A Bill further to amend the Governors (Emoluments, Allowances and Privileges) Act, 1982.

BE it enacted by Parliament in the Forty-third Year of the Republic of India as follows:—

Short title. and commencement.

1. (*1*) This Act may be called the Governors (Emoluments, Allowances and Privileges) Amendment Act, 1992.

(*2*) It shall be deemed to have come into force on the 1st day of June, 1988.

Amendment of section 3 of Act 43. of 1982.

2. In section 3 of the Governors (Emoluments, Allowances and Privileges) Act, 1982, in the proviso, in clause (*a*),—

(*a*) in sub-clause (*ii*), for the word "and", occurring at the end, the word "or" shall be substituted;

(*b*) sub-clause (*iii*) shall be omitted.

STATEMENT OF OBJECTS AND REASONS

Section 3 of the Governors (Emoluments, Allowances and Privileges) Act, 1982 (43 of 1982) provides that there shall be paid to every Governor emoluments at the rate of Rs. 11,000/- per mensem. Clause (a) of the proviso of this section also provides that if a Governor, at the time of his appointment, is in receipt of a pension (other than disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his emoluments shall be reduced,—

(i) by the amount of that pension; and

(ii) if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service the commuted value thereof, by the amount of that portion of the pension; and

(iii) if he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity.

2. The Government of India in the Ministry of Personnel, Public Grievances and Pensions have issued orders to the effect that the pension equivalent of gratuity may not be deducted while fixing the pay of re-employed pensioners. The Ministry of Finance have also issued orders that the pension equivalent of gratuity will not be taken into account while fixing the initial pay of retired Judges of the High Courts and Supreme Court appointed to Committees or on Commissions. These orders have been made effective from the 1st June, 1988.

3. The Bill seeks to amend the Governors (Emoluments, Allowances and Privileges) Act, 1982 to allow the benefit of not deducting pension equivalent of gratuity from the emoluments payable to Governors. According to the amendments proposed in the Bill, Governors who had received retirement gratuity in respect of previous service would be benefited.

4. The Bill seeks to achieve the above object.

NEW DELHI;
The 21st February, 1992.

S. B. CHAVAN

BILL NO. 37 OF 1992

A Bill to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Forty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. (*1*) This Act may be called the Securities and Exchange Board of India Act, 1992.

(*2*) It extends to the whole of India.

(*3*) It shall be deemed to have come into force on the 30th day of January, 1992.

Definitions.

2. (*1*) In this Act, unless the context otherwise requires,—

(*a*) "Board" means the Securities and Exchange Board of India established under section 3;

(*b*) "Chairman" means the Chairman of the Board;

(*c*) "existing Securities and Exchange Board" means the Securities and Exchange Board of India constituted under the Resolution of the Government of India in the Department of Economic Affairs No. 1(44)SE/86, dated the 12th day of April, 1988;

(*d*) "Fund" means the Fund constituted under section 14;

(*e*) "member" means a member of the Board and includes the Chairman;

(*f*) "notification" means a notification published in the Official Gazette;

(*g*) "prescribed" means prescribed by rules made under this Act;

(*h*) "regulations" means the regulations made by the Board under this Act;

(*i*) "securities" has the meaning assigned to it in section 2 of the Securities Contracts (Regulation) Act, 1956. 42 of 1956.

(*2*) Words and expressions used and not defined in this Act but defined in the Capital Issues (Control) Act, 1947, or the Securities Contracts (Regulation) Act, 1956 shall have the meanings respectively assigned to them in those Acts. 29 of 1947. 42 of 1956.

CHAPTER II

ESTABLISHMENT OF THE SECURITIES AND EXCHANGE BOARD OF INDIA

Establishment and incorporation of Board.

3. (*1*) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Board by the name of the Securities and Exchange Board of India.

(*2*) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

(*3*) The head office of the Board shall be at Bombay.

(*4*) The Board may establish offices at other places in India.

Management of the Board

4. (*1*) The Board shall consist of the following members, namely:—

(*a*) a Chairman;

(*b*) two members from amongst the officials of the Ministries of the Central Government dealing with Finance and Law;

(*c*) one member from amongst the officials of the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934; 2 of 1934.

(*d*) two other members,

to be appointed by the Central Government.

(*2*) The general superintendence, direction and management of the affairs of the Board shall vest in a Board of members, which may exercise all powers and do all acts and things which may be exercised or done by the Board.

(*3*) Save as otherwise determined by regulations, the Chairman shall also have powers of general superintendence and direction of the affairs of the Board and may also exercise all powers and do all acts and things which may be exercised or done by that Board.

(*4*) The Chairman and members referred to in clauses (*a*) and (*d*) of sub-section (*1*) shall be appointed by the Central Government and the members referred to in clauses (*b*) and (*c*) of that sub-section shall be nominated by the Central Government and the Reserve Bank of India respectively.

(*5*) The Chairman and the other members referred to in clauses (*a*) and (*d*) of sub-section (*1*) shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to securities market or have special knowledge or experience of law, finance, economics, accountancy, administration or in any other discipline which, in the opinion of the Central Government, shall be useful to the Board.

Term of office and conditions of service of Chairman and members of the Board.

5. (*1*) The term of office and other conditions of service of the Chairman and the members referred to in clause (*d*) of sub-section (*1*) of section 4 shall be such as may be prescribed.

(*2*) Notwithstanding anything contained in sub-section (*1*), the Central Government shall have the right to terminate the services of the Chairman or a member appointed under clause (*d*) of sub-section (*1*) of section 4, at any time before the expiry of the period prescribed under sub-section (*1*), by giving him notice of not less than three months in writing or three months' salary and allowances in lieu thereof, and the Chairman or a member, as the case may be, shall also have the right to relinquish his office, at any time before the expiry of the period prescribed under sub-section (*1*), by giving to the Central Government notice of not less than three months in writing.

Removal of member from office.

6. (*1*) The Central Government shall remove a member from office if he—

(*a*) is, or at any time has been, adjudicated as insolvent;

(*b*) is of unsound mind and stands so declared by a competent court;

(*c*) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude;

(*d*) is appointed as a director of a company;

(*e*) has, in the opinion of the Central Government, so abused his position as to render his continuation in office detrimental to the public interest:

Provided that no member shall be removed under this clause unless he has been given a reasonable opportunity of being heard in the matter.

Meetings.

7. (*1*) The Board shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be provided by regulations.

(*2*) The Chairman or, if for any reason, he is unable to attend a meeting of the Board, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(*3*) All questions which come up before any meeting of the Board shall be decided by a majority votes of the members present and voting, and, in the event of an equality of votes, the Chairman, or in his absence, the person presiding, shall have a second or casting vote.

Vacancies etc., not to invalidate proceedings of Board.

8. No act or proceeding of the Board shall be invalid merely by reason of—

(*a*) any vacancy in, or any defect in the constitution of, the Board; or

(*b*) any defect in the appointment of a person acting as a member of the Board; or

(*c*) any irregularity in the procedure of the Board not affecting the merits of the case.

Officers and employees of the Board.

9. (*1*) The Board may appoint such other officers and employees as it considers necessary for the efficient discharge of its functions under this Act.

(*2*) The term and other conditions of service of officers and employees of the Board appointed under sub-section (*1*) shall be such as may be determined by regulations.

CHAPTER III

TRANSFER OF ASSETS, LIABILITIES, ETC., OF THE EXISTING SECURITIES AND EXCHANGE BOARD TO THE BOARD

Transfer of assets, liabilities, etc., of existing Securities and Exchange Board to the Board.

10. (*1*) On and from the date of establishment of the Board,—

(*a*) any reference to the existing Securities and Exchange Board in any law other than this Act or in any contract or other instrument shall be deemed as a reference to the Board;

(*b*) all properties and assets, movable and immovable, of, or belonging to, the existing Securities and Exchange Board, shall vest in the Board;

(*c*) all rights and liabilities of the existing Securities and Exchange Board shall be transferred to, and be the rights and liabilities of, the Board;

(*d*) without prejudice to the provisions of clause (*c*), all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the existing Securities and Exchange Board immediately before that date, for or in connection with the purpose of the said existing Board shall be deemed to have been incurred, entered into, or engaged to be done by, with or, for, the Board;

(*e*) all sums of money due to the existing Securities and Exchange Board immediately before that date shall be deemed to be due to the Board;

(*f*) all suits and other legal proceedings instituted or which could have been instituted by or against the existing Securities and Exchange Board immediately before that date may be continued or may be instituted by or against the Board; and

(*g*) every employee holding any office under the existing Securities and Exchange Board immediately before that date shall hold his office in the Board by the same tenure and upon the same terms and conditions of service as respects remuneration, leave, provident fund, retirement and other terminal benefits as he would have held such office if the Board had not been established and shall continue to do so as an employee of the Board or until the expiry of the period of six months from that date if such employee opts not to be the employee of the Board within such period.

(*2*) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, absorption of any employee by the Board in its regular service under this section shall not entitle such employee to any compensation under that Act or other law and no such claim shall be entertained by any court, tribunal or other authority.

14 of 1947

CHAPTER IV

POWERS AND FUNCTIONS OF THE BOARD

Functions of Board.

11. (*1*) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

(*2*) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for—

(*a*) regulating the business in stock exchanges and any other securities markets;

(*b*) registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner;

(*c*) registering and regulating the working of collective investment schemes, including mutual funds;

(*d*) promoting and regulating self-regulatory organisations;

(*e*) prohibiting fraudulent and unfair trade practices relating to securities markets;

(*f*) promoting investors' education and training of intermediaries of securities markets;

(*g*) prohibiting insider trading in securities;

(*h*) regulating substantial acquisition of shares and take-over of companies;

(*i*) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges and intermediaries and self-regulatory organisations in the securities market;

(*j*) performing such functions and exercising such powers under the provisions of the Capital Issues (Control) Act, 1947 and the Securities Contracts (Regulation) Act, 1956, as may be delegated to it by the Central Government; 29 of 1947. 42 of 1956.

(*k*) levying fees or other charges for carrying out the purposes of this section;

(*l*) conducting research for the above purposes;

(*m*) performing such other functions as may be prescribed.

CHAPTER V

REGISTRATION CERTIFICATE

Registration of stock-brokers, sub-brokers, share transfer agents, etc.

12. (*1*) No stock-broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the rules made under this Act:

Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application.

(*2*) Every application for registration shall be in such manner and on payment of such fees as may be determined by regulations.

(*3*) The Board may, by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations :

Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.

CHAPTER VI

FINANCE, ACCOUNTS AND AUDIT

Grants by the Central Government.

13. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Board grants of such sums of money as that Government may think fit for being utilised for the purposes of this Act.

Fund.

14. (*1*) There shall be constituted a Fund to be called the Securities and Exchange Board of India General Fund and there shall be credited thereto—

(*a*) all grants, fees and charges received by the Board under this Act; and

(*b*) all sums received by the Board from such other sources as may be decided upon by the Central Government.

(*2*) The Fund shall be applied for meeting—

(*a*) the salaries, allowances and other remuneration of the members, officers and other employees of the Board;

(*b*) the expenses of the Board in the discharge of its functions under section 11,

(*c*) the expenses on objects and for purposes authorised by this Act.

Accounts and audit.

15. (*1*) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(*2*) The accounts of the Board shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General of India.

(*3*) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Board shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board.

(*4*) The accounts of the Board as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

CHAPTER VII

MISCELLANEOUS

Power of Central Government to issue directions.

16. (*1*) Without prejudice to the foregoing provisions of this Act, the Board shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the Board shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(*2*) The decision of the Central Government whether a question is one of policy or not shall be final.

Power of Central Government to supersede the Board.

17. (*1*) If at any time the Central Government is of opinion—

(*a*) that on account of grave emergency, the Board is unable to discharge the functions and duties imposed on it by or under the provisions of this Act; or

(*b*) that the Board has persistently made default in complying with any direction issued by the Central Government under this Act or in the discharge of the functions and duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Board or the administration of the Board has deteriorated; or

(*c*) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification, supersede the Board for such period, not exceeding six months, as may be specified in the notification.

(*2*) Upon the publication of a notification under sub-section (*1*) superseding the Board,—

(*a*) all the members shall, as from the date of supersession, vacate their offices as such;

(*b*) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Board, shall until the Board is reconstituted under sub-section (*3*), be exercised and discharged by such person or persons as the Central Government may direct; and

(*c*) all property owned or controlled by the Board shall, until the Board is reconstituted under sub-section (*3*), vest in the Central Government.

(*3*) On the expiration of the period of supersession specified in the notification issued under sub-section (*1*), the Central Government may reconstitute the Board by a fresh appointment and in such case any person or persons who vacated their offices under clause (*a*) of sub-section (*2*), shall not be deemed disqualified for appointment:

Provided that the Central Government may, at any time, before the expiration of the period of supersession, take action under this sub-section.

(*4*) The Central Government shall cause a notification issued under sub-section (*1*) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

Returns and reports

18. (*1*) The Board shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing programme for the promotion and development of the securities market, as the Central Government may, from time to time, require.

(2) Without prejudice to the provisions of sub-section (1), the Board shall within sixty days after the end of each financial year, submit to the Central Government a report in such form, as may be prescribed, giving a true and full account of its activities, policy and programmes during the previous financial year.

(3) A copy of the report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

Delegation.

19. The Board may, by general or special order in writing delegate to any member, officer of the Board or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers under section 29) as it may deem necessary.

Appeals.

20. (1) Any person aggrieved by an order of the Board made under this Act, or the rules or regulations made thereunder may prefer an appeal to the Central Government within such time as may be prescribed.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed therefore if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within the prescribed period.

(3) Every appeal made under this section shall be made in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.

(4) The procedure for disposing of an appeal shall be such as may be prescribed:

Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

Savings.

21. Nothing in this Act shall exempt any person from any suit or other proceedings which might, apart from this Act, be brought against him.

Members, officers and employees of the Board to be public servants.

45 of 1860.

22. All members, officers and other employees of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

Protection of action taken in good faith.

23. No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer of the Central Government or any member, officer or other employee of the Board for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

Penalty.

24. Whoever contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Efflemption from tax on Wealth and income.

25. Notwithstanding anything contained in the Wealth-tax Act, 1957, the Income-tax Act, 1961 or any other enactment for the time being in force relating to tax on wealth, income, profits or gains— 27 of 1957. 43 of 1961.

(*a*) the Board;

(*b*) the existing Securities and Exchange Board from the date of its constitution to the date of establishment of the Board,

shall not be liable to pay wealth-tax, income-tax or any other tax in respect of their wealth, income, profits or gains derived.

Cognizance of Offences by courts.

26. (*1*) No court shall take cognizance of any offence punishable under this Act or any rules or regulations made thereunder, save on a complaint made by the Board with the previous sanction of the Central Government.

(*2*) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

Offences by companies.

27. (*1*) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(*2*) Notwithstanding anything contained in sub-section (*1*), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(*a*) "company" means any body corporate and includes a firm or other association of individuals; and

(*b*) "director", in relation to a firm, means a partner in the firm.

Power to exempt.

28. If the Central Government is of the opinion that it is necessary or expedient so to do in public interest, it may, by order published in the Official Gazette, exempt any person or class of persons buying or selling securities or otherwise with the securities market from the operation of the provisions of sub-section (*1*) of section 12.

Power to make rules.

29. (*1*) The Central Government may, by notification, make rules for carrying out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the term of office and other conditions of service of the Chairman and the members under sub-section (*1*) of section 5;

(*b*) the additional functions that may be performed by the Board under section 11,

(*c*) the conditions subject to which registration certificate is to be issued under sub-section (*1*) of section 12;

(*d*) the manner in which the accounts of the Board shall be maintained under section 15;

(*e*) the form and the manner in which returns and report to be made to the Central Government under section 18;

(f) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules.

Power to make regulations.

30. (*1*) The Board may, with the previous approval of the Central Government, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(*a*) the times and places of meetings of the Board and the procedure to be followed at such meetings under sub-section (*1*) of section 7 including quorum necessary for the transaction of business;

(*b*) the term and other conditions of service of officers and employees of the Board under sub-section (*2*) of section 9;

(*c*) the amount of fee to be paid for registration certificate and manner of suspension or cancellation of registration certificate under sub-sections (*2*) and (*3*) of section 12.

Rules and regulations to be laid before Parliament.

31. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Application of other laws not barred.

32. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Amendment of certain enactments.

33. The enactments specified in Parts I and II of the Schedule to this Act shall be amended in the manner specified therein and such amendments shall take effect on the date of establishment of the Board.

Power to remove difficulties.

34. (*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of five years from the commencement of this Act.

(*2*) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Repeal and saving.

35. (*1*) The Securities and Exchange Board of India Ordinance, 1992, how hereby repealed. Ord. 5 of 1992.

(*2*) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE SCHEDULE

(*See* section 33)

AMENDMENT OF CERTAIN ENACTMENTS

PART I

AMENDMENTS TO THE CAPITAL ISSUES (CONTROL) ACT, 1947

(29 OF 1947)

In section 10, *for* "to that Government" *substitute* "to that Government or the Securities and Exchange Board of India".

PART II

AMENDMENTS TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

(42 OF 1956)

1. Section 2, in clause (*h*), for sub-clause (*ii*), *substitute* the following:—

"(*ii*) Government securities;

(*iia*) such other instruments as may be declared by the Central Government to be securities; and".

2. Section 6,—

(*i*) in sub-section (*1*), for "Central Government", *substitute* "Securities and Exchange Board of India";

(*ii*) in sub-section (*2*), *for* "by the Central Government", *substitute* "by the Securities and Exchange Board of India";

(*iii*) in sub-section (*3*), *for* "Central Government" wherever it occurs, *substitute* "Securities and Exchange Board of India";

3. Section 9, *for* "Central Government" wherever it occurs, *substitute* "Securities and Exchange Board of India";

4. Section 10, *for* "Central Government" wherever it occurs, *substitute* "Securities and Exchange Board of India";

5. Section 17, in sub-section (*1*), *for* "licence granted by the Central Government", *substitute* "licence granted by the Securities and Exchange Board of India";

6. Section 21, *for* "Central Government", *substitute* "Securities and Exchange Board of India";

7. Section 22A, in sub-section (*3*), *for* clause (*b*), *substitute* the following:—

"(*b*) that the transfer of the securities is in contravention of any law or rules made thereunder or any administrative instructions or conditions of listing agreement laid down in pursuance of such laws or rules;",

8. In sub-section (*2*) of section 23, *for* "Central Government under section 21 or section 22", *substitute* "Securities and Exchange Board of India under section 21 or the Central Government under section 22";

9. *After* section 29, *insert* the following:—

"29A. The Central Government may, by order published in the Official Gazette, direct that the powers exercisable by it under any provision of this Act shall, in relation to such matters and subject to such conditions, if any as may be specified in the order, be exercisable also by the Securities and Exchange Board of India.". Power to delegate.

STATEMENT OF OBJECTS AND REASONS

Securities and Exchange Board of India (SEBI) was established in 1988 through a Government Resolution to promote orderly and healthy growth of the securities market and for investors' protection. SEBI has been monitoring the activities of stock exchanges, mutual funds and merchant bankers, etc., to achieve these goals.

The capital market has witnessed tremendous growth in recent times, characterised particularly by the increasing participation of the public. Investors' confidence in the capital market can be sustained largely by ensuring investors' protection. With this end in view, Government decided to vest SEBI immediately with statutory powers required to deal effectively with all matters relating to capital market. As Parliament was not in session, and there was an urgent need to instil a sense of confidence in the public in the growth and stability of the capital market, the President promulgated the Securities and Exchange Board of India Ordinance, 1992 (No. 5 of 1992) on the 30th January, 1992.

3. The Bill seeks to replace the aforesaid Ordinance.

NEW DELHI; MANMOHAN SINGH.
The 24th February, 1992.

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274 OF THE CONSTITUTION OF INDIA

[Copy of letter No. 1(44)/SE/86, dated the 25th February, 1992 from Dr. Manmohan Singh, Minister of Finance to the Secretary-General, Lok Sabha.]

The President having been informed of the subject matter of the proposed Bill to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and for matters connected therewith or incidental thereto, recommends under Clause (1) of article 117 and article 274 of the Constitution for introduction and under Clause (3) of article 117 thereof for consideration, of the above Bill in Lok Sabha.

Notes on clauses

Clause 2 seeks to define certain words and expressions used in the Bill.

Clause 3 provides for the establishment of a body corporate by the name of Securities and Exchange Board of India with head quarters at Bombay.

Cause 4 provides for the constitution of the Board of members consisting of a Chairman, two whole-time members to be appointed by the Central Government and two members to be nominated by the Central Government and one member by the Reserve Bank of India.

Clause 5 makes provisions relating to the term of office and other conditions of service of the Chairman and members appointed by the Central Government.

Clause 6 provides for the contingencies in which the Central Government may remove a member from office.

Clause 7 makes provisions regarding meetings of the Board.

Clause 8 lays down that any vacancy or defect or irregularity in the constitution of the Board shall not invalidate proceedings of the Board.

Clause 9 provides for the appointment of officers and employees of the Board and the terms and conditions of their service.

Clause 10 provides for transfer of assets and liabilities of the existing Securities and Exchange Board to the Board. It further provides for the transfer of employees of the existing Securities and Exchange Board to the Board.

Clause 11 provides for the powers and functions of the Board with a view to protect the interest of investors in securities and to promote the development of and to regulate the securities market.

Clause 12 provides for the Board to register stock brokers, sub-brokers, share transfer agents and other intermediaries associated with securities market with the exceptions that the existing stock brokers, sub-brokers, etc., may buy, sell or otherwise deal with the securities market without registration for a period of three months from the date of establishment of the Board.

Clause 13 provides for making of grants by the Central Government to the Board to be utilised for the purposes of the Bill.

Clause 14 provides for the constitution of the Security and Exchange Board of India General Fund. It further provides that the grants, fees, charges and other sums received by the Board should be credited thereto and all its payments should be made therefrom.

Clause 15 provides for usual provisions regarding maintenance of proper accounts and other relevant records by the Board as may be prescribed by the Central Government. The accounts of the Board should be audited and certified by the Comptroller and Auditor-General of India which would be laid before the Parliament by the Central Government.

Clause 16 confers on the Central Government the power to issue directions to the Board.

Clause 17 confers on the Central Government the power to supersede the Board. The Central Government through a notification can supersede the Board for a period not exceeding 6 months if it is statisfied that on account of grave emergency, the Board is unable to discharge its duties or that the Board has persistently made defaults in complying with the directions of the Central Government.

Clause 18 provides for the Central Government to call for returns and statements from the Board in regard to matters provided for in the Bill.

Clause 19 provides for the delegations of certain powers of the Board.

Clause 20 provides for a person aggrieved by an order made by the Board to appeal to the Central Government.

Clause 21 saves the suit or proceedings which might be brought against any person under any other law.

Clause 22 specifies that the members, officers and other employees of the Board shall be deemed to be public servants.

Clause 23 provides for usual provision relating to the protection of action taken in good faith.

Clause 24 provides for penalty for contravention of the provisions of the Bill or any rules or regulations made thereunder.

Clause 25 provides the Board with exemptions from tax on wealth and income.

Clause 26 lays down that a court should take cognizance of offences punishable under the provisions of the Bill or any rules or regulations made thereunder on a complaint made by the Board with the previous sanction of the Central Government.

Clause 27 provides that any offence committed by a company and punishable under the Bill would cover the persons in charge of company.

Clause 28 confers on the Central Government in public interest, the power to exempt any person dealing with securities market from the operation of the provisions of sub-clause (*1*) of clause 12 of the Bill.

Clause 29 confers on the Central Government the power to make rules for carrying out the provisions of the Bill.

Clause 30 empowers the Board to make regulations with the previous approval of the Central Government consistent with the Bill.

Clause 31 lays down that the rules and regulations made under the Bill would be laid before the Parliament.

Clause 32 provides that the provisions of the Bill are not in derogation of the provisions of any other law for the time being in force.

Clause 33 provides for amendments of enactments specified in the Schedule.

Clause 34 seeks to empower the Central Government to remove any difficulty which may arise in giving effect to the provisions of the Bill.

Clause 35 of the Bill seeks to repeal the Securities and Exchange Board of India Ordinance, 1992 and save actions taken thereunder as if taken under the corresponding provisions of the Bill.

FINANCIAL MEMORANDUM

Clause 13 of the Bill contains a provision under which the Central Government may make grants to the Board as may be deemed necessary. Grants will be made after due appropriation made by Parliament by law in this behalf. It is not possible at this stage to visualise the nature and quantum of expenditure which may be involved in the creation and operation of the Fund.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 29 of the Bill empowers the Central Government to make rules regarding:—

(i) the term of office and other conditions of service of the Chairman and the members under sub-clause (1) of clause 5;

(ii) the additional functions that may be performed by the Board under clause 11;

(iii) the conditions subject to which registration certificate is to be issued under sub-clause (1) of clause 12;

(iv) the manner in which the accounts of the Board shall be maintained under clause 15;

(v) the form and the manner in which returns and report are to be made to the Central Government under clause 18;

(vi) any other matter which is to be, or may be, prescribed or in respect of which provision is to be made by rules.

2. Clause 30 empowers the Board, with the prior approval of the Central Government, to make regulations regarding:—

(i) the times and places of meetings of the Board and the procedure to be followed at such meetings under sub-clause (1) of clause 7 including quorum necessary for the transaction of business;

(ii) the terms and other conditions of service of officers and employees of the Board under sub-clause (2) of clause 9;

(iii) the amount of fee to be paid for registration certificate and manner of suspension or cancellation of registration certificate under sub-clauses (2) and (3) of clause 12.

3. The matter with respect to which rules or regulations may be made under the aforesaid provisions are matters of procedure and detail. The delegation of legislative power contained in such provisions is, therefore, of a normal character.

MEMORANDUM EXPLAINING THE MODIFICATIONS CONTAINED IN THE BILL TO REPLACE THE SECURITIES AND EXCHANGE BOARD OF INDIA ORDINANCE, 1992

The Securities and Exchange Board of India Bill, 1992 which seeks to repeal and replace the Securities and Exchange Board of India Ordinance, 1992 proposes to make certain modifications of drafting nature in sub-clause (2) of clause 2, sub-clauses (2) and (3) of clause 7 and sub-clause (2) of clause 27. The modifications are clarificatory in nature.

C. K. JAIN,
Secretary-General.

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